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*Proposed Interim Co-Lead Class Counsel  
for the Putative Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

# IN RE GOOGLE PLAY CONSUMER ANTITRUST LITIGATION

## This Document Relates to All Actions

Case No. 3:20-cv-05761-JD

**DECLARATION OF ADAM J. ZAPALA  
IN SUPPORT OF MOTION TO  
APPOINT COTCHETT, PITRE &  
McCARTHY, LLP AND KAPLAN FOX &  
KILSHEIMER LLP AS INTERIM CO-  
LEAD COUNSEL AND FOR  
APPOINTMENT OF A STEERING  
COMMITTEE**

Hearing Date: December 31, 2020  
Hearing Time: 10:00 a.m.  
Judge: Hon. James Donato

1 I, **ADAM J. ZAPALA**, declare as follows:

2       1. I am an attorney duly licensed to practice law before all courts in California and  
 3 before this Court. I am a Partner with the law firm of Cotchett, Pitre & McCarthy, LLP (“CPM”)  
 4 and am one of the attorneys for Plaintiff Brian McNamara. This declaration is made in support of  
 5 Plaintiff Brian McNamara’s Notice of Motion and Motion to Appoint Cotchett, Pitre & McCarthy,  
 6 LLP and Kaplan Fox & Kilsheimer LLP as Interim Co-Lead Counsel for the Consumer Plaintiffs.

7       2. I have personal knowledge of the matters stated herein and, if called upon, I could  
 8 and would competently testify thereto. I make this declaration pursuant to 28 U.S.C. §1746.

9 **I. CPM and Kaplan Fox Have Performed Substantial Work to Develop the Claims  
 10 Asserted in this Litigation**

11       3. CPM filed its complaint in the *McNamara* action on October 20, 2020. Prior to filing  
 12 the complaint, however, CPM had been looking into Google’s conduct for years. Since our firm is  
 13 located on the San Francisco Peninsula, near Google’s headquarters, it is my understanding that we  
 14 have been contacted by several potential third-party witnesses with relevant information about  
 15 Google and its conduct. In addition, we closely tracked the United States Government’s own  
 16 investigation of Google and potential antitrust violations.

17       4. Before filing, CPM researched the underlying conduct that gave rise to the consumer  
 18 class’s claims, the nature of the mobile application industry, and the injuries and damages alleged  
 19 to have been caused by the conduct. CPM also reviewed publicly available information related to  
 20 Google to determine that the claims are susceptible to class treatment. This knowledge assisted  
 21 CPM in conducting its investigation and drafting the initial complaint.

22       5. Along with Kaplan Fox, CPM has closely followed the news regarding worldwide  
 23 investigations into Google’s conduct, including the multiple European Union antitrust  
 24 investigations.

25       6. After the extensive U.S. House Report, CPM believed sufficient evidence of  
 26 Google’s unlawful conduct existed to file an action. In the days between the publication of the U.S.  
 27 House Report and the filing of the complaints, counsel undertook an extensive analysis of the  
 28 relevant facts and law.

1       7.     CPM and Kaplan Fox have also retained and consulted with an economic expert  
 2 who reviewed and commented on the allegations in the complaint. Productive consultations have  
 3 continued. CPM and Kaplan Fox have also consulted with an industry expert, who is highly  
 4 knowledgeable about the Android ecosystem.

5       8.     CPM and Kaplan Fox have worked together, and with other counsel in the case, to  
 6 ensure the efficient coordination of the proceedings, including helping to schedule a conference call  
 7 for November 25, 2020 among all counsel for consumer plaintiffs to discuss leadership and  
 8 organization of plaintiffs' counsel, along with the filing of a Consolidated Amended Complaint. In  
 9 this regard, the moving firms had hoped to reach a consensus on leadership prior to any contested  
 10 motion practice.

11 **II.    CPM'S EXPERIENCE HANDLING ANTITRUST CLASS ACTIONS AND OTHER  
 12 HIGHLY COMPLEX ACTIONS**

13       9.     CPM has extensive experience in complex antitrust class actions in United States  
 14 district courts across the country. As summarized below, CPM has been appointed to serve in  
 15 leadership positions in many of these antitrust class actions. I have personally worked extensively  
 16 on many of the following cases.

17       10.    In *In re Automotive Parts Antitrust Litigation*, Case No. 2:12-md-02311-SFC (MDL  
 18 2311) (E.D. Mich.) ("Auto Parts"), CPM is co-lead counsel on behalf of end-payor plaintiffs and  
 19 consumers against manufacturers of automotive parts for engaging in a decade-plus long conspiracy  
 20 to raise the prices of automotive components sold to manufacturers, including Honda, Toyota, and  
 21 Nissan, among others. To date, CPM and co-counsel have recovered more than \$1.2 billion for the  
 22 class. CPM was recently presented with the American Antitrust Institute's prestigious award for  
 23 litigation of the year for its work on the *Auto Parts* litigation.

24       11.    CPM has been singled out by district courts for its leadership in complex antitrust  
 25 cases. For example, in *In re Transpacific Air Passenger Transportation Antitrust Litigation*, Case  
 26 No. 3:07-cv-05634-CRB (N.D. Cal.) ("Transpacific"), CPM was co-lead counsel in a complex class  
 27 action alleging price-fixing by global airlines. I, along with other CPM attorneys, were part of a  
 28 team that reviewed millions of pages of documents, and took depositions all over the world, before

1 prevailing on motions where the Court rejected complex legal arguments including the filed-rate  
 2 doctrine, the act of state doctrine and sovereign compulsion, followed by negotiating major  
 3 settlements. I have been involved extensively in all aspects of the case, including protracted briefing  
 4 on various legal issues, all stages of the discovery process including extensive depositions, briefing  
 5 and argument on summary judgment motions concerning the filed-rate doctrine, settlement  
 6 discussions and negotiations, appeals, class certification, and trial preparation. Judge Charles R.  
 7 Breyer called CPM's work in the case "exceptional."

8       12. In *In re Capacitors Antitrust Litigation*, Case No. 3:14-cv-03264-JD (N.D. Cal.)  
 9 ("Capacitors"), CPM was appointed sole lead counsel to represent the indirect purchasers of  
 10 capacitors (film or electrolytic capacitors) against the leading manufacturers of capacitors sold in  
 11 the United States. As this Court knows, I have been involved in this case since its inception. I have  
 12 handled a variety of tasks in this case, including briefing numerous legal issues, all stages of  
 13 discovery including extensive depositions, and settlement discussions and negotiations. CPM has  
 14 recovered more than \$80 million on behalf of the class in this ongoing litigation.

15       13. In *In re Resistors Antirust Litigation*, Case No. 3:15-cv-03820-JD (N.D. Cal.)  
 16 ("Resistors"), CPM was sole lead counsel on behalf of a class of indirect purchaser plaintiffs of  
 17 resistors from defendants who allegedly conspired to unlawfully inflate, fix, raise, maintain or  
 18 artificially stabilize the prices. I have been involved extensively in all aspects of this case since its  
 19 inception. CPM has recovered over \$30 million on behalf of their clients.

20       14. In *In re Lithium Batteries Antitrust Litigation*, Case No. 4:13-md-02424-YGR (N.D.  
 21 Cal.) ("Batteries"), CPM was appointed co-lead counsel on behalf of indirect purchasers alleging a  
 22 price-fixing conspiracy in the lithium-ion battery industry. CPM and co-lead counsel, Lieff,  
 23 Cabraser, et al., and Hagens Berman, recovered over \$100 million for the class.

24       15. In *In re Methionine Antitrust Litigation*, Case No. 3:00-md-01311-CRB (N.D. Cal.),  
 25 CPM was appointed Co-Lead Counsel in this antitrust action against several methionine  
 26 manufacturers involved in an alleged conspiracy to fix the prices of and allocate the markets for  
 27 methionine. CPM ultimately helped settled the case for \$107 million.

1       16. In *In re Broiler Chicken Antitrust Litigation*, Case No. 1:16-cv-08637-TMD (N.D.  
 2 Ill.) (“*Broilers*”), CPM is co-lead counsel and represents commercial and institutional indirect  
 3 purchasers who allege chicken broiler suppliers engaged in a nationwide conspiracy to fix prices  
 4 and coordinate their output. I have been involved extensively in all aspects of this litigation,  
 5 including substantial work with economists and on class certification.

6       17. In addition to the foregoing, CPM has or continues to serve in a leadership capacity  
 7 in many other complex antitrust actions, including: *In re Generic Pharmaceuticals Pricing Antitrust*  
 8 *Litigation*, 2:16-md-02724-CMR (E.D. Pa.) (serving on plaintiffs’ steering committee) and *In re*  
 9 *Parking Heaters Antitrust Litigation*, Case No. 1:15-mc-00940-JG (E.D.N.Y.) (serving as liaison  
 10 counsel).

11      18. CPM has also been recognized for its leadership role with other counsel in complex  
 12 antitrust class actions. In *In re International Air Transportation Surcharge Antitrust Litigation*,  
 13 Case No. M:06-md-01793-CRB (MDL No. 1793) (N.D. Cal.), CPM was co-lead counsel in the  
 14 MDL class action alleging price-fixing of air passenger tickets by British Airways PLC and Virgin  
 15 Atlantic Airways, Ltd. Judge Charles R. Breyer again lauded CPM and its co-counsel’s work for  
 16 their efforts to achieve “an outstanding settlement in which a group of lawyers from two firms  
 17 coordinated the work . . . and brought an enormous expertise and then experience in dealing with  
 18 the case.” Judge Breyer added that the lawyers are “more than competent. They are outstanding.”

19      19. CPM served as co-lead counsel in *Precision Associates, Inc., et al. v. Panalpina*  
 20 *World Transport (Holding) Ltd.*, Case No. 1:08-cv-00042-JG-VVP (E.D. N.Y.) (“*Freight*  
 21 *Forwarders*”), a case alleging price-fixing for air shipping by freight forwarders throughout the  
 22 world that led to significant settlements with defendants. CPM and co-lead counsel commenced  
 23 this case before any government indictments or guilty pleas, and without the assistance from an  
 24 Amnesty Applicant. CPM was instrumental in working on all aspects of the case, including *inter*  
 25 *alia*, preparing the consolidated class action complaints and defeating motions to dismiss. CPM  
 26 reviewed millions of pages of documents, conducted numerous interviews of current and former  
 27 employees of Settling Defendants, prepared for and took the depositions of several Defendants both

1 domestically and internationally, and played a central role in negotiating the settlements. I was  
 2 involved extensively in litigating this highly successful class action case.

3       20. In *In re Dynamic Random Access Memory (DRAM II) Antitrust Litigation*, Case No.  
 4 4:18-cv-03805-JSW (N.D. Cal.), CPM is co-lead counsel on behalf of direct purchasers of Dynamic  
 5 Random Access Memory chips, alleging a price-fixing conspiracy for DRAM sold in the United  
 6 States.

7       21. In *In re Static Random Access Memory (SRAM) Antitrust Litigation*, Case No. 4:07-  
 8 md-01819-CW (MDL No. 1819) (N.D. Cal.) (“SRAM”), CPM was lead counsel in an MDL class  
 9 action for direct purchasers of Static Random Access Memory chips. Important legal rulings were  
 10 reached on cutting edge issues such as standing of class representatives and the proper showing for  
 11 class certification.

12       22. In *In re Domestic Airline Travel Antitrust Litigation*, Case No. 1:15-mc-01404-CKK  
 13 (MDL No. 2656) (D. D.C.) (“Domestic Air”), CPM is co-lead counsel on behalf of plaintiffs  
 14 alleging that the major airlines, including American, Delta, Southwest, and United, fixed prices for  
 15 air passenger transportation services within the United States, its territories, and the District of  
 16 Columbia. CPM and its co-counsel have recovered \$60 million in this ongoing litigation.

17       23. In the case *In re Webkinz Antitrust Litigation*, Case No. M:08-cv-01987-RS (MDL  
 18 No. 1987) (N.D. Cal.). CPM was lead counsel in a tying case for a class of persons or entities in the  
 19 U.S. who ordered Webkinz from Ganz that required they also order other Ganz’s “core line”  
 20 products.

21       24. In *In re Qualcomm Antitrust Litigation*, Case No. 5:17-md-02773-LHK (N.D. Cal.),  
 22 CPM is co-lead counsel for classes of consumers and businesses alleging Qualcomm engaged in a  
 23 monopoly and other anticompetitive conduct for cellular devices and modem chips.

24       25. In addition to the foregoing actions where CPM served as lead or co-lead counsel,  
 25 CPM has also served on Executive Committees, Steering Committees, and as Committee Chair in  
 26 other litigation.

27       26. In *In re Cathode Ray Tubes (CRT) Antitrust Litigation*, Case No. 4:07-cv-05944-  
 28 JST (MDL No. 1917) (N.D. Cal.) (“CRT”), CPM was appointed to an Executive Committee

1 position and represented a class of direct purchaser plaintiffs against manufacturers of cathode ray  
 2 terminals whose prices were artificially raised.

3       27. In *In re Optical Disk Drive (ODD) Antitrust Litigation*, Case No. 3:10-md-02143-  
 4 RS (MDL No. 2143) (N.D. Cal.) (“ODD”), CPM was appointed as a member of the Executive  
 5 Committee for this multidistrict litigation alleging a conspiracy that manufacturers of optical disk  
 6 drives fixed prices of ODD's sold directly to plaintiffs in the United States.

7       28. In the case *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*,  
 8 Case No. 4:02-md-01486-PJH (MDL No. 1486) (N.D. Cal.) (“DRAM I”) CPM served as chair of  
 9 the Discovery Committee for this multidistrict litigation arising from the price-fixing of DRAM, a  
 10 form of computer memory.

11       29. In the MDL case *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No.  
 12 2:16-md-02724-CMR (E.D. Pa.) (“Generic Drugs”), CPM was appointed to the Plaintiffs’ Steering  
 13 Committee and represents indirect purchasers (specifically, end-payor union health & welfare  
 14 funds) of generic drugs seeking to recoup overcharges stemming from a vast alleged price-fixing  
 15 conspiracy.

### 16       **III. CPM’S ADDITIONAL QUALIFICATIONS FOR APPOINTMENT AS INTERIM 17 CO-LEAD COUNSEL**

18       30. In addition to CPM’s experience in complex antitrust class actions, CPM has  
 19 developed extensive relationships with consultants and industry experts, which will be helpful to  
 20 this litigation. Further, CPM has a reputation for respect and trust among defense counsel, and has  
 21 laid a solid foundation for a working relationship with counsel for the defendants in this case.  
 22 CPM’s willingness to engage in meaningful relationships with counsel will allow them to prosecute  
 23 this litigation vigorously, efficiently, and in a manner consistent with best practices.

24       31. CPM’s reputation is one reason large institutional investors and public entities, such  
 25 as the California State Teachers’ Retirement System and The Regents of the University of  
 26 California, have selected CPM as counsel in some of their most important cases. The *National Law  
 27 Journal* has named CPM one of the outstanding antitrust firms, and reported that CPM attorneys

are regarded by plaintiff and defense lawyers as among the foremost trial lawyers in the nation. The *Daily Journal* has also named CPM one of the top law firms.

32. CPM has also successfully tried a number class actions. For example, CPM secured a ground-breaking \$1.15 billion judgment against the lead paint industry after a two-month trial in Santa Clara County Superior Court. *See People of the State of California v. Atlantic Richfield, et al.* Santa Clara Sup. Ct, Case No. 1-00-CV-788657 (“*Lead Paint*”). The *Lead Paint* verdict was the result of years of hard fought litigation, including multiple appeals to the Court of Appeal and California Supreme Court, and stands as the only successful trial against the lead paint industry for creating a public nuisance threatening the health and well-being of children. *See, e.g., County of Santa Clara et al. v. Atlantic Richfield, et al.*, 50 Cal.4th 35 (2010); *County of Santa Clara et al. v. Atlantic Richfield, et al.*, 161 Cal.App.4th 1140 (2008); *County of Santa Clara et al. v. Atlantic Richfield, et al.*, 137 Cal.App.4th 292 (2006). It is one example of the many trials of CPM attorneys.

#### **IV. CPM'S ACCOMPLISHED AND DIVERSE LITIGATION TEAM**

33. A true and correct copy of CPM's firm resume, which includes attorneys who are working on this case, is attached hereto and incorporated herein by reference as **Exhibit A**. As a Partner at CPM, I have extensive experience litigating highly complex antitrust and other actions before federal district courts across the country. The *Daily Journal* named me as one of the top 30 antitrust attorneys in California. In addition to the foregoing, I have served in a leadership role in the cutting edge MDL privacy case, *In re Vizio Inc. Consumer Privacy Litigation*, Case No. 16-md-02693-JLS (C.D. Cal.), recovering \$17 million as well as attaining groundbreaking injunctive relief and significant business practice changes. In addition to the many cases that I work on and for which I have been appointed lead counsel, discussed above, below I have outlined the qualifications of the many excellent lawyers at CPM who will be working on this case.

NANCI E. NISHMURA

34. CPM Partner Nanci Nishimura leads the firm's complex individual actions focusing on antitrust and business litigation. She represents dozens of cities, counties, and other public entities in California, New York, and Texas, in large and complex individual actions coordinated

1 with class actions in courts across the country. She was recently named among the 50 Top Women  
2 Lawyers in California for 2020.

3 **MARK C. MOLUMPHY**

4 35. CPM Partner Mark Molumphy chairs the firm's Securities, Consumer Protection  
5 and Privacy practices, representing institutions, public entities, and individual consumers, from case  
6 initiation, mediation, and to trial. Mr. Molumphy has served as lead or co-lead counsel in some of  
7 the largest and most complex actions in the country, and has obtained excellent results, including  
8 helping to secure a settlement in the *Apple Batteries* case worth up to \$500 million.

9 **ELIZABETH T. CASTILLO**

10 36. CPM Partner Elizabeth Castillo focuses on complex litigation, specifically, antitrust  
11 class actions. Ms. Castillo has represented clients in both federal and state courts and at all stages  
12 of litigation, including discovery, trial, and appeals. Ms. Castillo was recognized with the  
13 Outstanding Antitrust Litigation Achievement in Private Practice Award in 2019 for her work in  
14 the *Auto Parts* case.

15 **TAMARAH P. PREVOST**

16 37. CPM Partner Tamarah P. Prevost has practiced in a wide range of civil litigation  
17 areas, including antitrust, privacy, consumer protection, mass torts, and securities. She has served  
18 an indispensable role in several antitrust cases in which CPM serves as interim lead or co-lead  
19 counsel, including cases summarized in the firm resume.

20 **NOORJAHAN RAHMAN**

21 38. CPM associate Noorjahan Rahman has practiced in a wide range of civil litigation  
22 areas, including privacy, consumer protection, mass torts, and securities. She has served an  
23 indispensable role in several class actions and derivative actions in which CPM serves as interim  
24 lead or co-lead counsel, including cases summarized in the firm resume.

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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Executed this 25th day of November 2020 in Burlingame, California.

4 */s/ Adam J. Zapala*  
5 ADAM J. ZAPALA

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# **EXHIBIT A**

# COTCHETT PITRE & McCARTHY LLP

Cotchett, Pitre & McCarthy, LLP (“CPM”) is one of the nation’s leading plaintiff firms, and its dedication to prosecuting or defending socially just actions has earned it a national reputation. Based on the San Francisco Peninsula, CPM also has offices in New York and Los Angeles. CPM’s team of 33 trial lawyers, virtually all admitted to the California bar and the Northern District of California, are highly experienced in federal and California law.

CPM also has substantial resources in house to devote to cases of national magnitude. CPM’s attorneys are supported by over 50 professionals, including paralegals and investigators with extensive class action experience. CPM has technical expertise and experience to handle complex cases and associated discovery, as well as the financial resources required to fund and litigate cases through trial and appeal. CPM has repeatedly demonstrated that commitment in many of the largest cases in the United States. CPM will stay the course in cases that require decades to resolve and has done exactly that, including the lead paint public nuisance cases on behalf of California public entities, which resulted in a \$1.15 billion trial verdict after 13 years of litigation and 6 years of appeals.



## NANCI E. NISHIMURA, PARTNER

Nanci E. Nishimura is a partner at CPM and leads the firm’s complex individual actions focusing on antitrust and business litigation. Nishimura attended the University of Southern California, where she earned both undergraduate and graduate degrees, Waseda University in Japan, and the Columbus School of Law at The Catholic University in Washington, D.C. Nishimura worked at the U.S. Overseas Private Investment Corporation and clerked at the U.S. International Trade Commission in D.C. She joined CPM from Los Angeles, after working as co-counsel in antitrust and securities class actions. Nishimura has represented plaintiffs in some of the largest and most complex individual actions coordinated in State and Federal Courts across the country .

Nishimura has led complex cases alleging antitrust and other claims on behalf of dozens of cities, counties, and other public entities and non-profit organizations in California, New York and Texas, including the City of Los Angeles, Los Angeles World Airports, The Regents of the University of California, California State University Board of Trustees, East Bay Municipal Utilities District, Sacramento Suburban Water District, City and County of San Francisco, County of San Diego, County of San Mateo, and Houston, Texas. As detailed on CPM’s website at [www.cpmlegal.com](http://www.cpmlegal.com), and as summarized below, Nishimura and CPM have demonstrated a knowledge of the law, the skill and ability to work with others, and the resources and commitment to pursue justice for her clients. Below are representative cases:

***In re: LIBOR-based Financial Instruments Antitrust Litigation***, Case No. 11-md-2262-NRB (MDL 2262) (S.D.N.Y.). Nishimura is the lead attorney in actions filed on behalf of 15 California public entities and consolidated for pretrial purposes in multidistrict litigation. Plaintiffs

LAW OFFICES

COTCHETT, PITRE &amp; McCARTHY, LLP

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include San Diego Association of Governments, The Regents of the University of California, East Bay Municipal Utility District, City of Richmond, City of Riverside, County of Sacramento, County of San Mateo, and Houston, Texas. The complaints allege that more than a dozen of the world's major financial institutions that reported their daily interbank borrowing rates to the British Bankers Association (BBA) which are used to set the global benchmark interest rates known as the London Interbank Offered Rate (LIBOR), manipulated their reported borrowing rates to benefit their profits and credit ratings, to the detriment of transactions worldwide with interest rates set to LIBOR from consumer loans to complex municipal investment instruments.

***Ambac Bond Insurance Litigation***, San Francisco County Superior Court Case No. CJC-08-004555 (JCCP 4555) (CEK). Nishimura was the lead attorney in individual actions filed on behalf of 26 California public entities. Plaintiffs include The Regents of the University of California, City of Los Angeles, Los Angeles World Airports, City and County of San Francisco, East Bay Municipal Utility District, and two non-profits, including the Jewish Community Center of San Francisco. The complaints alleged antitrust violations by seven defendant bond insurance companies for maintaining an unfair dual credit rating system with three defendant credit rating agencies requiring municipalities to pay exorbitant premiums to insure bonds issued to raise money for public projects. The case recently settled for more than \$18 million.

***In re: Municipal Derivatives Antitrust Litigation***, Case No. 1:08-cv-02516-VM-GWG (MDL 1950) (S.D.N.Y.). Nishimura was the lead attorney in individual actions filed on behalf of 20 California public entities and consolidated for pretrial purposes in multidistrict litigation. Plaintiffs include City of Los Angeles, City of Stockton, East Bay Municipal Utility District, Sacramento Municipal Utility District, County of San Diego, County of San Mateo, and Contra Costa County. The complaints allege antitrust violations by more than three dozen financial institutions, insurance companies, and brokers to rig the bidding process for municipal derivative transactions used by public entities to invest unused bond proceeds. Plaintiffs recovered more than \$10 million.

***People of the State of California v. Atlantic Richfield, et al.***, No. 1-00-CV-788657 (Santa Clara Superior Court), CPM represented the state of California along with 10 California cities and counties in a public nuisance action. After over a decade of litigation, the case went to trial and resulted in a judgment of \$1.15 billion in 2013.

***Anthony P. Miele III v. Franklin Resources, Inc.***, 3:15-cv-00199-LB (N.D. Cal.). Nishimura was one of the lead lawyers in a major case defending Franklin Resources, Inc., one of the world's largest mutual funds. The complaint alleged that in 1974, when plaintiff's father died, he held 4,000 Franklin shares in trust for plaintiff who was then three years old. After years of contentious litigation involving discovery and depositions across the country, CPM's client prevailed on summary judgment, which was affirmed by the 9<sup>th</sup> Circuit. The petition for certiorari was denied by the U.S. Supreme Court.

**ADAM J. ZAPALA, PARTNER**

Adam Zapala focuses antitrust and complex litigation, including employment & civil rights, privacy & cybersecurity, qui tam/false claims, consumer protection and class actions generally. Zapala received a B.A. from Stanford University and his J.D. from University of California, Hastings College of the Law. Prior to CPM, Zapala represented labor unions, Taft-Hartley Pension and Health & Welfare funds, employees and consumers in complex litigation, arbitrations and NLRB proceedings, serving as trial counsel in countless arbitrations on behalf of labor unions and employee benefit funds.

Mr. Zapala has served as lead counsel, or in other court-appointed leadership positions, in some of the largest and most complex litigation matters in the United States and has obtained outstanding results. He is known for his deep understanding of antitrust law and class action practice and procedure. Additionally, Mr. Zapala regularly represents executives and employees in complex employment litigation, securing substantial settlements and judgments for his clients.

Mr. Zapala has been recognized by courts, his peers, and by various publications for his outstanding work, including the 2019 American Antitrust Institute (AAI) recognition for his and his colleagues' work in the groundbreaking *Auto Parts* antitrust litigation, where CPM represents end-payor plaintiffs and recovered over \$1 billion in settlements on their behalf. In 2020, the *Daily Journal* recognized Zapala as one of the top antitrust lawyers in California. His work on cases has regularly appeared in Top Settlements & Verdicts. Representative cases include the following:

***In re Automotive Parts Antitrust Litigation***, United States District Court, Eastern District of Michigan. CPM serves as co-lead counsel for end-payor plaintiffs against scores of automotive parts suppliers for engaging in massive conspiracies to fix the prices, rig the bids, and allocate the markets of various automotive parts sold to automobile manufacturers, next sold to automobile dealerships, and then sold to consumers and businesses. To date, CPM and its co-lead counsel have recovered over \$1.2 billion for the classes.

***Freight Forwarders Antitrust Litigation***, United States District Court, Eastern District of New York. CPM served as co-lead counsel for purchasers of freight forwarding services from freight forwarders that engaged in a conspiracy to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of freight forwarding services. CPM and its co-lead counsel recovered approximately \$450 million for the class.

***In re Transpacific Passenger Air Transportation Antitrust Litigation***, United States District Court, Northern District of California. CPM served as co-lead counsel for purchasers of air transportation against 13 Asian and Oceanic airlines for engaging in a conspiracy to fix the prices of discount fares and fuel surcharges on long-haul passenger flights for transpacific routes. CPM and its co-lead counsel recovered over \$148 million for the classes.

***In re Lithium Batteries Antitrust Litigation***, United States District Court, Northern District of California. CPM served as co-lead counsel for indirect purchasers of lithium-ion

batteries against lithium-ion battery suppliers for engaging in a conspiracy to fix the prices of these products. CPM and its co-lead counsel recovered \$113 million for the classes.

***In re Capacitors Antitrust Litigation***, United States District Court, Northern District of California. CPM serves as lead counsel for indirect purchasers of electrolytic and film capacitors against capacitor manufacturers for engaging in two massive and separate conspiracies to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of electrolytic and film capacitors, respectively. To date, CPM has recovered \$80.4 million for the classes.

***In re Resistors Antitrust Litigation***, United States District Court, Northern District of California. CPM served lead counsel for indirect purchasers of linear resistors for engaging in a conspiracy to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of linear resistors. CPM recovered \$33.4 million for the classes.

***In re Domestic Airline Travel Antitrust Litigation***, United States District Court, District of Columbia. Zapala and CPM serve as co-lead counsel for purchasers of air transportation against American Airlines, Inc., Delta Airlines, Inc., Southwest Airlines Co., and United Airlines, Inc. for engaging in a conspiracy to restrict capacity and thereby raise prices for air passenger transportation services. To date, CPM and its co-lead counsel have recovered \$60 million for the class.

In ***In re Vizio, Inc. Consumer Privacy Litigation***, No. 16-md-02693-JLS (C.D. Cal.), Zapala and CPM served as co-lead counsel for consumers who alleged that Vizio violated privacy and consumer-protection laws by secretly collecting sensitive information about what was displayed on Smart TVs for years and then selling the data to advertisers. The action settled for \$17 million and substantial injunctive relief and was granted final approval by District Court Judge Josephine Staton.

***In re Broiler Chicken Antitrust Litigation***, United States District Court, Northern District of Illinois. CPM serves as co-lead counsel for commercial and institutional indirect purchasers against broiler chicken suppliers for engaging in a conspiracy to fix, raise, maintain, and stabilize the prices of broiler chickens by coordinating output and limiting production with the intended and expected result of increasing the prices of broiler chickens.

***In re Qualcomm Antitrust Litigation***, United States District Court, Northern District of California. CPM serves as co-lead counsel for classes of consumers and businesses against Qualcomm for monopolizing and engaging in other anticompetitive conduct in the market for cellular devices and modem chips.

***In re Generic Pharmaceuticals Pricing Antitrust Litigation***, United States District Court, Eastern District of Pennsylvania. Zapala and CPM serve as a member of the Executive Committee and represent end-payor plaintiffs of generic drugs against dozens of generic drug manufacturers for alleged engaging in conspiracies to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of dozens of generic drugs.

**ELIZABETH TRAN CASTILLO, PARTNER**

Elizabeth Tran Castillo is a partner in the Antitrust & Global Competition practice group. Her practice focuses on complex litigation and, specifically, antitrust class actions against international cartels. Castillo received her B.A. from in Economics and Political Science, with a concentration in Public Policy, from Boston University, and J.D. from the University of California, Hastings College of the Law. She served as a Judicial Extern to the Honorable A. James Robertson II in San Francisco Superior Court.

Castillo's successes include representing End-Payor Plaintiffs in *In re Automotive Parts Antitrust Litigation (Auto Parts)*, a multidistrict litigation pending in the Eastern District of Michigan. *Auto Parts* concerns the bid-rigging, price-fixing, and market allocation of scores of automotive parts and has become the largest indirect purchaser class action in terms of settlement value in history. Castillo received the American Antitrust Institute's Outstanding Antitrust Litigation Achievement by a Young Lawyer Award in 2016 and Outstanding Antitrust Litigation Achievement in Private Law Award in 2019 for her work on *Auto Parts*.

Castillo has represented clients in both federal and state courts and at all stages of litigation, including discovery, trial, and appeals. While she is involved in all aspects of the cases she litigates, she places emphasis on her discovery and settlement strategy work. For example, she was part of a trial team that obtained a multimillion-dollar economic loss jury verdict for a former Major League Baseball pitcher in 2018. Representative cases include the foregoing and the following:

***In re Automotive Parts Antitrust Litigation***, United States District Court, Eastern District of Michigan. CPM serves as co-lead counsel for end-payor plaintiffs against scores of automotive parts suppliers for allegedly engaging in massive conspiracies to fix the prices, rig the bids, and allocate the markets of various automotive parts sold to automobile manufacturers, next sold to automobile dealerships, and then sold to consumers and businesses. To date, CPM and its co-lead counsel have recovered over \$1.2 billion for the classes.

***In re Transpacific Passenger Air Transportation Antitrust Litigation***, United States District Court, Northern District of California. CPM served as co-lead counsel for purchasers of air transportation against 13 Asian and Oceanic airlines for allegedly engaging in a conspiracy to fix the prices of discount fares and fuel surcharges on long-haul passenger flights for transpacific routes. CPM and its co-lead counsel recovered over \$148 million for the classes.

***In re Capacitors Antitrust Litigation***, United States District Court, Northern District of California. CPM serves as lead counsel for indirect purchasers of electrolytic and film capacitors against capacitor suppliers for allegedly engaging in two massive and separate conspiracies to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of electrolytic and film capacitors, respectively. To date, CPM has recovered \$80.4 million for the classes.



### MARK C. MOLUMPHY, PARTNER

Mark C. Molumphy is a partner at CPM and chairs the firm's Securities, Consumer Protection and Privacy practices. Molumphy, a lifelong resident of the Bay Area, attended the University of California, Berkeley, Edinburgh University, and the University of San Francisco, and has spent his entire legal career at CPM, now over 27 years. During this time, Molumphy has served as a lead or co-lead counsel in some of the largest and most complex actions litigated in the country, and obtained historic results.

Molumphy has represented institutions, public entities, and individual consumers alike, including a nationwide class of senior citizens in *Medical Capital* who lost their life's savings when the company was suddenly put in receivership. After defeating efforts by the SEC to take over the case and settle claims for a far lesser amount, Molumphy took the case to the eve of trial and, just before opening statements, secured the largest Ponzi-scheme recovery in California history with a \$219 million settlement from two banks who assisted the scheme. In the *Yahoo!* litigation, Molumphy served as co-lead counsel for shareholders asserting both derivative and direct claims following revelation of the two largest data breaches in U.S. history, just as Yahoo was about to be acquired by Verizon. Molumphy sought injunctive relief to enjoin the merger, obtained discovery, and personally deposed Yahoo's Chief Information Security Officer about the scope of the breaches – evidence cited by the Santa Clara Superior Court in requiring changes to the proxy materials. Molumphy then helped negotiate one of the largest monetary recoveries ever in a derivative case based on privacy violations. More recently, Molumphy and partner, Joseph Cotchett, served as co-lead counsel in the *Apple Batteries* litigation in this District, helping to secure a settlement worth between \$310 to \$500 million, and now pending final approval. In these cases, and others detailed below and in CPM's website, [www.cpmlegal.com](http://www.cpmlegal.com), Molumphy and CPM have demonstrated both knowledge of the law, the ability to work with others, and the resources and commitment to obtain justice for clients. Representative examples are provided below.

In *In re Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.), CPM served as co-lead counsel in the MDL alleging that Apple misled iPhone customers to install an operating system software update that secretly slowed down or “throttled” the performance of their iPhones. After multiple rounds of motions to dismiss, handled by Molumphy, District Judge Edward Davila allowed claims to proceed based on California’s UCL and CDAFA, the CFAA, and trespass to chattels. Molumphy coordinated the review of millions of documents and depositions of Apple employees and proposed class representative plaintiffs. In May 2020, Judge Davila preliminary approved the settlement by which Apple will pay a minimum of \$310 million and up to \$500 million to Apple iPhone consumers.

In *In re Yahoo! Inc. Shareholder Litigation*, No. 17-CV-307054 (Santa Clara Super. Ct.), Molumphy served as co-lead counsel and successfully negotiated a \$29 million settlement in January 2019, the first of its kind recovery in a derivative action based on data breaches. The action followed two massive security breaches of Yahoo’s computer network, impacting billions of customers, and revealed just prior to Yahoo’s merger with Verizon. By seeking additional injunctive relief relating to the merger, Molumphy successfully obtained expedited discovery and deposed Yahoo’s then Chief Information Security Officer. After a preliminary injunction hearing, the Santa Clara Superior Court required amendments to the proxy and, shortly thereafter, defendants settled the derivative claims for \$29 million. His work was instrumental in shaping data breach related derivative litigation.

In *In re Facebook Derivative Litigation*, No. 4:18-cv-01792-HSG (N.D. Cal.), Molumphy serves as lead counsel in this derivative action against Facebook's current and former officers and directors based on Facebook's monetization of private information of its customers without their consent, and authorized disclosure to third parties, including Cambridge Analytica. The action is currently pending before United States District Judge Haywood Gilliam.

In *Chicago Laborers Pension Fund, et al. v. Alibaba Group Holding Limited, et al.*, No. CIV535692 (San Mateo Super. Ct.), Molumphy served as co-lead counsel for a class of investors in Alibaba's billion initial public offering, the largest in United States history at the time. Following the IPO, Alibaba revealed that its online platform had been the subject of Chinese regulator investigation and required forms. The action was brought in San Mateo Superior Court, where Alibaba maintained its US headquarters. After extensive motion practice, and multi-national discovery, including depositions of Alibaba employees based in China, the case settled for \$75 million.

In *In re LendingClub Securities Litigation*, No. CIV537300 (San Mateo Super. Ct.) Molumphy was co-lead counsel for a certified class of shareholders based on LendingClub's initial public offering. The state court action was coordinated with a class action filed in the Northern District of California, before District Judge William Alsup, and plaintiffs joined in discovery and settlement efforts. The actions ultimately settled for \$125 million.

In *Kerrigan Capital LLC v. Strohm, et al.* (San Mateo Super. Ct.), Molumphy served as lead counsel for a certified class of Oportun's common shareholders who alleged that their ownership interests were unfairly diluted by a series of insider financing rounds led by Oportun's largest preferred shareholders, including venture capital funds that had representatives on Oportun's Board of Directors. The action raised novel issues of first impression including recovery of dilution-based damages by minority shareholders, the applicable standard of care to management of a private corporation, and the existence of conflicts of interest impacting Board-sponsored financing. The action ultimately settled shortly before trial for \$7.5 million.



### TAMARAH PREVOST, PARTNER

Tamarah Prevost is a partner at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including employment law, antitrust litigation, and consumer rights. Tamarah has represented employees in a wide variety of employment disputes in state and federal court and arbitration proceedings. Her cases have included those involving stock options and start-up companies, whistleblowers, and victims of discrimination, sexual harassment, and racial profiling.

Tamarah has been selected as a Northern California "Rising Star" in Employment Litigation by San Francisco Magazine in 2018, 2019, and 2020. Ms. Prevost is a regular panelist speaker on employment litigation topics at the CAOC (Consumer Attorneys of California) Annual Conventions in San Francisco, Sonoma, and Hawaii, and is a member of the Employment Section of the American Association for Justice. She is also a regular contributor to the Daily Journal newspaper, on topics related to employment law.

Tamarah received her J.D. from Santa Clara University School of Law. Tamarah was born and raised in Vancouver, British Columbia, Canada and obtained her Bachelor of Arts degree with First Class Honors from Simon Fraser University.

Representative cases include the foregoing and the following:

***In re Lithium Batteries Antitrust Litigation***, United States District Court, Northern District of California. CPM served as co-lead counsel for indirect purchasers of lithium-ion batteries against lithium-ion battery suppliers for engaging in a conspiracy to fix the prices of these products. CPM and its co-lead counsel recovered \$113 million for the classes.

***In re Resistors Antitrust Litigation***, United States District Court, Northern District of California. CPM served lead counsel for indirect purchasers of linear resistors for engaging in a conspiracy to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of linear resistors. CPM recovered \$33.4 million for the classes.

***In re Broiler Chicken Antitrust Litigation***, United States District Court, Northern District of Illinois. CPM serves as co-lead counsel for commercial and institutional indirect purchasers against broiler chicken suppliers for engaging in a conspiracy to fix, raise, maintain, and stabilize the prices of broiler chickens by coordinating output and limiting production with the intended and expected result of increasing the prices of broiler chickens.

**NOORJAHAN RAHMAN, ASSOCIATE**

Noorjahan Rahman has a diverse practice that includes securities and derivative class actions, consumer protection and complex commercial litigation. Rahman graduated from The Ohio State University with a B.A. in Political Science and B.A. in History. She received her J.D. from Georgetown University Law Center where she served on the editorial board of the Georgetown Journal of Legal Ethics. As a law student, Rahman obtained political asylum for two Honduran refugees. Prior to law school, she served as a Teach for America corp member in Washington, D.C.

Prior to joining CPM, Rahman practiced law in Ohio for several years, where her practice focused on business litigation. At CPM, Rahman represents plaintiffs in a number of worthy causes where CPM serves as lead or co-lead counsel, including the following.

***Earth Island Institute v. Crystal Geyser Water Co., et al.***, No. 4:20-cv-02212-HSG (N.D. Cal.); 20civ01213 (San Mateo County Superior Court). CPM represents Earth Island, a Berkeley-based non-profit organization, seeking to hold major consumer goods companies accountable for their contribution to plastic pollution along California shorelines and in waterways. Earth Island alleges that, among other conduct, the defendants mislead consumers about the recyclability of their products' plastic packaging.

***In re Robinhood Outage Litigation***, No. 3:20-cv-01626-JD (N.D. Cal.). CPM represents a putative class of consumers who were impacted by major outages of Robinhood's stock trading platform during key fluctuations in the stock market. The plaintiffs allege that Robinhood was negligent in the development and maintenance of the Robinhood application, and that the company failed to implement an adequate business continuity plan as required by financial regulators.

***In re Slack Technologies, Inc. Shareholder Litigation***, No. 19civ05370 (San Mateo County Superior Court). CPM represents a putative class of investors who bought stock in the initial public offering (IPO) of Slack, a San Francisco-based technology company that offers a cloud-based productivity platform. The plaintiffs allege that the defendants omitted material information in the offering documents leading up to the public listing concerning weaknesses in the Slack platform's infrastructure, and that it had contractually obligated itself to pay steep penalties to certain consumers if it failed to provide uninterrupted service 99.99% of the time.

***In re Uber Technologies, Inc. Securities Litigation***, No. CGC-19-578554 (San Francisco Superior County Court). CPM represents a putative class of investors who allege that the defendants made misleading statements and omissions in connection with the company's \$8 billion initial public offering (IPO). The plaintiffs allege that the defendants concealed widespread problems at the company, including that its users had reported many reports of sexual assault, and that the company had posted billion-dollar losses in the weeks leading up to the IPO.

***Won, et al., v. Neumann, et al.***, No. CGC-19-581021 (San Francisco County Superior Court). CPM represents The We Company derivatively, and a putative class of investors who allege that directors of the company, including former CEO Adam Neumann mismanaged the company such that its valuation was reduced by over eighty percent (80%). The plaintiffs allege

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that directors permitted Neumann to engage in egregious self-dealing and this conduct, among others, led to the cancellation of the company's much-anticipated initial public offering.

***In re Zoom Video Communications, Inc. Privacy Litigation***, No. 5:20-cv-02155-LHK (N.D. Cal.). CPM represents a putative class of Zoom users subjected to nefarious conduct by "zoombombers" who hijacked private video conferences and displayed highly offensive material such as illicit imagery, hate speech, and violence. Class members also allege that Zoom violated privacy rights by transferring troves of personal data to third parties such as Facebook and LinkedIn without Zoom users' knowledge or consent.

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## OTHER NOTABLE CPM ACTIONS

In *In re Vizio, Inc. Consumer Privacy Litigation*, No. 16-md-02693-JLS (C.D. Cal.), CPM served as co-lead counsel for consumers who alleged that Vizio violated privacy and consumer-protection laws by secretly collecting sensitive information about what was displayed on Smart TVs for years and then selling the data to advertisers. The action settled for \$17 million and substantial injunctive relief and was granted final approval by District Court Judge Josephine Staton.

In *In re Lenovo Adware Litigation*, No. 5:15-md-02624-HSG (N.D. Cal.), CPM served as co-lead counsel in class action alleging that Lenovo surreptitiously installed malware on computers that illegally intercepted users' behavioral data, including browsing history and electronic communications. The action settled for \$8.3 million and was granted final approval by District Judge Haywood S. Gilliam, Jr.

In *I.C. et al v. Zynga, Inc.*, No. 3:20-cv-01539-YGR (N.D. Cal.), CPM represents a class of consumers alleging that Zynga failed to safeguard their personally identifiable information and failed to disclose unauthorized access by third parties through a data breach. The action is currently pending before District Court Judge Yvonne Gonzalez Rogers.

In *People of the State of California v. Atlantic Richfield, et al.*, No. 1-00-CV-788657 (Santa Clara Super. Ct.), CPM represented the state of California alongside ten California cities and counties in a public nuisance action. The six defendants included the largest historical manufacturers of lead-based paint and lead pigments in the country. After over a decade of litigation, the case went to trial and resulted in a judgment of \$1.15 billion in 2013.

In *In re Wells Fargo & Company Litigation*, No. CJC-18-004966 (San Francisco Super. Ct.), CPM was appointed lead counsel in case arising from Bank's fraudulent sales incentive system and creation of millions of fake accounts for unwitting customers. The action ultimately settled, in tandem with related federal action, for monetary payment, clawback of equity awards, and extensive governance reforms.

In *In re Medical Capital Securities Litigation*, No. 8:10-ml-02145-DOC-RNB (C.D. Cal.) CPM was co-lead counsel for noteholders who invested in Medical Capital, a receivable company that turned out to be a Ponzi scheme. After years of litigation, Bank of New York Mellon agreed to pay \$114 million to resolve the actions. Shortly thereafter, and on the eve of trial, Wells Fargo agreed to pay \$105 million dollars to resolve the actions. The combined \$219 million recovery in 2013 represents one of the largest recoveries against indenture trustees in United States history and the largest Ponzi recovery in California history.